



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

JAMES P. BROOKS  
ACTING COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection  
FROM: Christina Stacey, Bureau of Land & Water Quality, Portland  
RE: Consent Agreement for Ferraiolo Construction, Inc.  
DATE: June 16, 2011

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**Statute and Rule Reference:** The *Performance Standards for Excavations*, 38 M.R.S.A. § 480-D(8) states, in pertinent part, that a gravel pit must be naturally internally drained at all times unless a variance is obtained from the Department.

The *Performance Standards for Excavations*, 38 M.R.S.A. § 480-D(3)(D) states, in pertinent part, that petroleum products must be stored and handled over impervious surfaces that are designed to contain spills, and that a Spill Prevention, Control, and Countermeasures Plan (SPCC) must be posted at the site.

The *Oil Discharge Prevention and Pollution Control Law*, 38 M.R.S.A. § 543 states, in pertinent part, that the discharge of oil onto lands adjacent to, on or over the waters of the State is prohibited.

**Location:** Liberty, Maine

**Description:** On June 3, 2008, an inspection by Department staff of the property on Howes Cove Road revealed that Ferraiolo Construction, Inc. had breached a side slope in the gravel pit to allow water to drain out of the pit, resulting in an externally drained gravel pit. Ferraiolo Construction, Inc. did not first obtain a permit from the Department for this activity. The inspection further revealed that oil had been discharged onto the ground near the maintenance area, and the spills had not been reported to the Department. A Spill Prevention, Control, and Countermeasures Plan (SPCC) was not posted at the site, as required by the *Performance Standards for Excavations*.

**Environmental Issues:** Gravel pits have the potential to create erosion and sedimentation problems from uncontrolled runoff, as well as pollution to surface water and groundwater from fuel spills and equipment leaks. These concerns are addressed by operating a pit in compliance with the Department's *Performance Standards for Excavations*.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that Ferraiolo Construction, Inc. pay a monetary penalty of \$3,500.00, which has been paid. Ferraiolo Construction, Inc. has repaired the breach in the pit's side slope, such that the pit is now internally drained, and has also cleaned up the oil spills satisfactorily. Ferraiolo Construction, Inc. has submitted a Spill Prevention, Control, and Countermeasures Plan and posted it at the gravel pit. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and the fact that the violation could have been avoided.

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST.

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04679-2094  
(207) 764-0477 FAX: (207) 760-3143



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

DARRYL N. BROWN  
COMMISSIONER

IN THE MATTER OF:

FERRAILO CONSTRUCTION, INC.	)	ADMINISTRATIVE CONSENT
LIBERTY, WALDO, MAINE	)	AGREEMENT
MINING, OIL	)	(38 M.R.S.A. § 347-A)
EIS #2008-084-L	)	

This Agreement by and among Ferraiolo Construction, Inc., the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Ferraiolo Construction, Inc. owns a parcel of land on Howes Cove Road in Liberty, Maine as described and recorded in Book 2915 on Page 228 of the Waldo County Registry of Deeds.
2. Ferraiolo Construction, Inc., a Maine corporation with a mailing address of 28 Gordon Drive, Rockland, Maine 04841 that operates a gravel pit on the property described in Paragraph 1 of this Agreement. John Ferraiolo is the Treasurer of Ferraiolo Construciton, Inc.
3. On February 14, 2007, Ferraiolo Construction, Inc. filed a "Notice of Intent to Comply" pursuant to the *Performance Standards for Excavations*, 38 M.R.S.A. §490-C, to mine gravel and sand on the property described in Paragraph 1 of this Agreement.
4. On June 3, 2008, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that Ferraiolo Construction, Inc. had breached a slope in the gravel pit to allow water to drain out of the pit, resulting in the discharge of sediment to the surrounding area. Ferraiolo Construction, Inc. did not first obtain a permit from the Department for this activity. The inspection further revealed that Ferraiolo Construction, Inc. had discharged oil onto the soil near the maintenance area and refueling station. At the time of inspection, none of the spills that caused soil contamination were reported to the Department. A Spill Prevention, Control, and Countermeasures Plan (SPCC) was not posted at the site.
5. The activities described in Paragraph 4 of this Agreement constitute the following violations:
  - A. By operating a gravel pit that drains externally without first obtaining a permit from the Department, Ferraiolo Construction, Inc. violated the *Performance Standards for Excavations* 38 M.R.S.A. § 490-D(8).

IN THE MATTER OF:

FERRAILOLO CONSTRUCTION, INC.	)	ADMINISTRATIVE CONSENT
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MINING, OIL	)	(38 M.R.S.A. § 347-A)
EIS #2008-084-L	)	

- B. By failing to store and handle petroleum products over an impervious surface, and by failing to post a Spill Prevention, Control, and Countermeasures Plan (SPCC) at the gravel pit site, Ferraiolo Construction, Inc. violated the *Performance Standards for Excavations*, 38 M.R.S.A. § 490-D(3)(D).
- C. By discharging oil onto lands adjacent to, on or over ground and surface waters of the State, Ferraiolo Construction, Inc. violated Maine's Oil Discharge Prevention and Pollution Control Law, 38 M.R.S.A. § 543.
6. On June 12, 2008, the Department issued a Notice of Violation to Ferraiolo Construction, Inc. regarding the violations described in Paragraphs 4 and 5 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
7. On June 24, 2008, Department staff inspected the site and found that the oil-contaminated soils had been removed from the site and disposed of properly.
8. On August 27, 2009, Department staff inspected the site and found that the breach in the slope had been repaired, restoring internal drainage.
9. On March 24, 2011, Ferraiolo Construction, Inc. submitted a Spill Prevention, Control, and Countermeasures Plan (SPCC), as required by 38 M.R.S.A. §490-D(3)(D).
10. The Department has regulatory authority over the activities described herein.
11. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
12. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
13. To resolve the violations referred to in Paragraphs 4 and 5 of this Agreement, Ferraiolo Construction, Inc. agrees to pay the Treasurer, State of Maine, the sum of three thousand five hundred dollars (\$3,500.00) as a civil monetary penalty, which has already been paid.
14. The Department and the Office of the Attorney General grant a release of their causes of action against Ferraiolo Construction, Inc. for the specific violations listed in Paragraphs 4 and 5 of this Agreement on the express condition that all actions listed in Paragraph 13 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN THE MATTER OF:

FERRAIOLO CONSTRUCTION, INC.  
LIBERTY, WALDO, MAINE  
MINING, OIL  
EIS #2008-084-L

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ADMINISTRATIVE CONSENT  
AGREEMENT  
(38 M.R.S.A. § 347-A)

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

FERRAIOLO CONSTRUCTION, INC.

BY: 

JOHN FERRAIOLO, TREASURER

DATE: 4/27/11

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

AMY B. MILLS, ASSISTANT ATTORNEY GENERAL